IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5153 of 1989

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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Versus

STATE OF GUJARAT

Appearance:

MR PR THAKKAR for Petitioner

MR PD BHATE, AGP, for Respondent No. 1-2

NOTICE SERVED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 23/08/2004

ORAL JUDGEMENT

1.0 By way of this petition the petitioner has challenged the order of discharge simpliciter dated 19th August 1988 by which the Superintending Engineer, Baroda

Circle, Roads and Building Department has discharged the service of the petitioner on the ground that the services of the petitioner were not required.

2.0 The case of the petitioner can be briefly stated as under:

2.1 The petitioner was initially appointed as Technical Assistant in the Department of the State Government. After training he was posted at Navsari R & B Division upto in 1962. Thereafter he was transferred to Baroda where he has served upto 1978. The petitioner was promoted to the post of Overseer and posted at Command Area, Baroda Circle. Ultimately the petitioner was posted at Bharuch Division (R&B) in the year 1980 wherein he resumed duty on 15.11.1980.

2.2 According to the petitioner, since the petitioner was not given any work at the transferred place. Petitioner contends that as he had to remain present without doing any work at the service place, he had requested to grant leave for two months and till the respondents hand over the real work to be done at his service place. According to the petitioner the respondents granted leave to him. It is the case of the petitioner that he had to proceed on leave from 1.4.1981 for about three months due to domestic problems. According to him initially the leave was a shorter period and thereafter it was extended from time to time.

2.3 The Chairman of Selection Committee vide order dated 14.9.1981 ordered the petitioner to go on deputation as Overseer in Gujarat State Construction Corporation Limited at Gandhinagar. The said order was served upon the petitioner at Baroda. However, the petitioner did not resume duty at Gandhinagar. The petitioner contended that though the posting order was passed, no relieving order from Bharuch Sub Division was passed. According to the petitioner, he thereupon applied for further leave. However, the respondents informed him that the petitioner had already been ordered to transfer to Gandhinagar. The petitioner thereafter did not attend the duty and informed the Bharuch Division Office about his inability to resume duty at Gandhinagar.

2.4 In July 1982 the petitioner approached the Gandhinagar office to resume duty as deputationist Overseer, but the concerned officer has not allowed him to join duty there. The petitioner had also contacted Baroda and Bharuch offices, to find a way out. Thereafter in December 1982 the petitioner wrote a letter

to the Chairman of Selection Committee, Sachivalaya, Gandhinagar requesting to instruct the petitioner as to where he should resume his duty. It is alleged that he has not received any reply to the same. According to the petitioner he has written various letters to the respondent authorities requesting to allow him to resume duty, but the respondent has not given any reply.

2.5 The respondents issued a chargesheet on 11.2.1987 alleging that the petitioner had remained absent without permission for long time. The petitioner has replied to the said chargesheet. Thereafter an inquiry officer was appointed and inquiry was conducted. The inquiry was completed and the petitioner was informed on 2.8.1987 accordingly. Ultimately the services of the petitioner were terminated by order dated 19th August 1988.

3.0 Mr. Thakkar for the petitioner contended that the order dated 19th August 1988 is in violation of the principles of natural justice.

3.1 He further submitted that no inquiry was conducted though chargesheet was issued.

3.2 The third contention raised by the petitioner is that the order is punitive and simple discharge inasmuch as the order is based on the allegations levelled against the petitioner in the chargesheet and therefore is a camouflage and therefore the same is required to be quashed and set aside.

4.0 Mr. P.D. Bhate, learned AGP for the respondents, submitted that the petitioner has already attained the age of superannuation and therefore there is no question of reinstatement.

4.1 Mr. Bhate pointed out that the petitioner remained absent from duty and a communication was sent to him by registered post AD, which was returned with an endorsement "Left India". Therefore, the petitioner has left India without prior permission of the respondents and hence the respondents thought it fit to relieve him by simple discharge and looking to the conduct of the petitioner no interference is called for by way of the present petition.

5.0 As regards the contention that the order is a punitive order is without any basis inasmuch as a plain reading of the order, it is evident that though in the reference they have referred to the chargesheet, and reply etc., they have not referred to any of the inquiry

report. The tenor of the order is very clear that since the service of I.M. Tailor is not required, his service is put an end with effect from 30th June 1981. Therefore the contention that the order is in a punitive nature cannot be accpted.

5.1 The second contention raised on behalf of the petitioner is that no inquiry was conducted against the petitioner. However, since the order is simpliciter, no inquiry is required to be conducted. Mr. Thakkar submitted that the respondent has relied upon the Inquiry Report dated 7th October 1987, but the same is not referred to in the impugned order. In this context it is required to be noted that the Court has to look into the order. Merely because in the affidavit in reply the respondent has pointed out about the inquiry report would not render the order illegal. In fact the respondent authorities have considered all the facts and circumstances and ultimately decided that the services of the petitioner are no longer required. The concerned authorities are the best authority to assess the requirement of service and therefore this Court would not sit in appeal over the said decision unless it is shockingly illegal and arbitrary. It is evident from the record that the transfer order sent to the petitioner was received by him but he did not join duty. Moreover, when a communication was sent to the petitioner, it was returned with an endorsement "Left India". Therefore, I do not find any infirmity in the order in question.

5.2 It is an admitted position that the petitioner has not joined duty or he was not allowed to join duty. However, after a period of almost 15 years I do not think it fit to go into the said question. In any case from the notice dated 22nd April 1983 it is clear that the petitioner was on leave for a very long time.

5.3 It is required to be noted that pursuant to the notice dated 22.4.1983 at Annexure-M to the petition, the petitioner has not raised any of the grounds which are raised in the present petition which is clear from the reply dated 29.4.1983 at Annexure-N to the petition. Thus, the case of the petitioner is inconsistent. Moreover, the reason for absence of the petitioner is clear that he was out of India without prior permission of the Government. In view of this, I am of the opinion that the order in question is just and proper and no interference is called for.

5.4 It is also on record that the petitioner had left India during the period in question. There is nothing on

record to show that the petitioner had informed the Department regarding his departure for abroad. Therefore, looking to the overall facts and circumstances of the case, it cannot be said that the impugned decision is an arbitrary one. Apart from that it is a simple discharge order and it is not in punitive nature. The inquiry report is not relied upon while passing the order and therefore I am of the opinion that there is no violation of principles of natural justice.

6.0 In the premises aforesaid, I do not find any substance in the present petition. The petition is accordingly rejected. Rule is discharged with no order as to costs.

[K.S. JHAVERI, J.]
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